

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

## **MEMORANDUM ORDER**

Plaintiff Dwayne Bybee, an inmate incarcerated at the Federal Correctional Institution at McKean in Bradford, Pennsylvania, initiated this action in the Court of Common Pleas of Erie County, Pennsylvania, by filing a *pro se* complaint against Fifth Third Bank (“Fifth Third”), Chex Systems, Inc., and five unidentified “John Doe” Defendants. Defendant Fifth Third subsequently removed the action to this Court by Notice of Removal dated August 17, 2022. [ECF No. 1]. Plaintiff’s complaint alleges that Defendants violated his rights under “the Fair Credit Reporting Act 15 U.S.C. 1681h(c),” the “Debt Collection Act,” and the “Consumer Protection Act 15 U.S.C. 1691, 1692.” This matter was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On August 24, 2022, Defendant Fifth Third filed a motion to dismiss for failure to state a claim upon which relief may be granted [ECF No. 3]. On February 6, 2023, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R") recommending that Fifth Third's motion be granted and that Plaintiff's claims against Fifth Third be dismissed for failure

to allege facts sufficient to support such claims; however, the R&R recommends that such dismissal be without prejudice to Plaintiff's right to amend his complaint within twenty days to correct the deficiencies noted in the R&R [ECF No. 24]. Objections to the R&R were due by February 23, 2023; however, no objections have been filed.

After *de novo* review of the complaint and documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 20<sup>th</sup> day of March, 2023;

IT IS HEREBY ORDERED that Defendant Fifth Third's motion to dismiss [ECF No. 3] is GRANTED and Plaintiff's claims against Fifth Third are DISMISSED, without prejudice to Plaintiff's right to file an amended complaint to correct the deficiencies noted in the R&R within twenty (20) days of the date of this Order. In the event Plaintiff fails to file an appropriate amended complaint within such time, the Court's dismissal of all claims against Defendant Fifth Third will be converted to a dismissal with prejudice without further notice. The report and recommendation of Magistrate Judge Lanzillo, issued February 6, 2023 [ECF No. 24], is adopted as the opinion of the court.



SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
U.S. Magistrate Judge  
all parties of record